

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1092**

State of Minnesota,
Respondent,

vs.

Robert Allen Mrozek,
Appellant.

**Filed May 8, 2023
Affirmed
Bjorkman, Judge**

Benton County District Court
File No. 05-CR-19-2075

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Karl Schmidt, Benton County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Greg Scanlan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Bjorkman, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his sentences for first-degree possession of a controlled
substance and driving while impaired (DWI), arguing that the district court abused its

discretion by denying his requests for (1) funding to obtain a transcript from a separate sentencing proceeding and (2) a downward dispositional departure. We affirm.

FACTS

During the afternoon of October 31, 2019, appellant Robert Mrozek lost control of the vehicle he was driving in Benton County and crashed. The responding officers noticed that Mrozek appeared impaired and discovered that he was under the influence of heroin. He also had more than 25 grams of heroin in his possession. The state charged Mrozek with first-degree possession of a controlled substance and third-degree DWI (enhanced based on a prior DWI). He was released on bail.

The following April, while those charges were pending, Mrozek sold heroin to a friend in Stearns County. The friend died of an overdose, and Mrozek was charged with third-degree murder. He pleaded guilty in April 2021 and received a probationary sentence, a downward dispositional departure.

Mrozek later pleaded guilty to the Benton County charges. He moved the district court for a downward dispositional departure, noting his family's history of chemical dependency, the injury that paralyzed him from the chest down at the age of 17 and the role it played in his own chemical dependency, his remorse over contributing to his friend's death, and his progress since entering chemical-dependency treatment in September 2021. He also pointed to the departure he had recently received in the Stearns County case and sought funds under Minn. Stat. § 611.21 (2022) to obtain the transcript from that sentencing hearing, arguing that the transcript was necessary to show that court's reasons for departing. The district court denied both requests and imposed the presumptive 73-month

prison sentence for the controlled-substance offense, with a concurrent jail term for the DWI.

Mrozek appeals.

DECISION

I. The district court did not abuse its discretion by denying Mrozek’s request for transcript funds.

Counsel for an indigent defendant may request funds from the district court for investigative, expert, or “other services necessary to an adequate defense in the case.” Minn. Stat. § 611.21(a). The defense must present “specific evidence” that the requested service is “necessary.” *State v. Volker*, 477 N.W.2d 909, 911 (Minn. App. 1991). We review an order denying funding under Minn. Stat. § 611.21 for an abuse of discretion. *State v. Cruz Montanez*, 926 N.W.2d 434, 436 (Minn. App. 2019), *rev. granted* (Minn. Apr. 8, 2019) *and appeal dismissed* (Minn. Mar. 11, 2020).

The district court denied Mrozek’s request for transcript funds because it found the Stearns County transcript neither “necessary” nor “relevant” to the Benton County sentencing. In challenging that decision, Mrozek argues that he needed the transcript to fully access the evidence that supported a departure in the Stearns County case.¹ This argument is unavailing for two reasons. First, he did not present it to the district court; his sole argument was that the transcript was necessary because it reflected the other court’s

¹ Mrozek notes that an indigent defendant is entitled to a transcript for purposes of appeal. *State v. Pederson*, 600 N.W.2d 451, 454 (Minn. 1999); Minn. R. Crim. P. 28.02, subd. 5. But neither *Pederson* nor rule 28.02 applies here because Mrozek sought a transcript for purposes of sentencing, not an appeal.

reasoning in granting the departure. As such, he has not preserved the alternative argument that the transcript was necessary to identify the *evidence* that was presented or referenced at that sentencing. *See State v. Bauer*, 776 N.W.2d 462, 471 (Minn. App. 2009) (stating that appellate courts “ordinarily will not decide issues that were not presented to the district court”), *aff’d*, 792 N.W.2d 825 (Minn. 2011).

Second, the record defeats Mrozek’s contention that he needed the transcript to access relevant evidence in the Stearns County case. While he may have been unable to access the sentencing transcript, he was able to access all documents filed in that case. In fact, he used several of those documents in support of his departure motion in this case, including: a favorable memorandum from a “Dispositional Advisor” in the public defender’s office, the sentencing order, and the district court’s departure report, which listed particular amenability to chemical-dependency treatment and remorse as factors justifying the probationary sentence.

Mrozek also asserts that the Stearns County sentencing transcript was necessary because it involved the same “factual determination” as in this case. We are not persuaded. The ultimate issue that each district court decided was the same—whether Mrozek was particularly amenable to probation. *See State v. Soto*, 855 N.W.2d 303, 309 (Minn. 2014). But each court’s analysis of the issue was necessarily distinct. Each court looked to distinct evidence because the factors it was required to consider were, at least partially, unique to the case at hand—Mrozek’s remorse *for the offense to be sentenced*, his cooperation *in the instant proceeding*, and his attitude before *that* court. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). And even with respect to sentencing factors common to both cases, such as

his age or community support, *see id.*, Mrozek acknowledges that the Stearns County District Court’s decision did not bind the Benton County District Court. Rather, each district court was empowered to exercise its broad discretion in assessing Mrozek’s amenability to probation. *See Soto*, 855 N.W.2d at 307-08. This means they could make different yet equally valid decisions. *See Wheat v. United States*, 486 U.S. 153, 164 (1988) (“Other district courts might have reached differing or opposite conclusions with equal justification, but that does not mean that one conclusion was ‘right’ and the other ‘wrong.’”); *Marquardt v. Schaffhausen*, 941 N.W.2d 715, 722 (Minn. 2020) (“[T]he fact that other district courts might have made a different decision . . . does not make the district court’s decision an abuse of discretion.”).

On this record, we discern no abuse of discretion by the district court in denying the funding request because Mrozek did not need the Stearns County sentencing transcript.

II. The district court did not abuse its discretion by denying a downward dispositional departure.

The Minnesota Sentencing guidelines prescribe a range of sentences that are presumptively appropriate. *Soto*, 855 N.W.2d at 308. But a district court may grant a downward dispositional departure based on a defendant’s “particular amenability to individualized treatment in a probationary setting.” *Trog*, 323 N.W.2d at 31. The defendant must be “particularly” amenable, not “merely . . . amenable to probation,” to establish the substantial and compelling circumstances that distinguish him from others and justify a departure. *Soto*, 855 N.W.2d at 309. When determining whether the defendant reaches this high bar, a court should consider “the defendant’s age, his prior

record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family.” *Trog*, 323 N.W.2d at 31. But a district court is not required to depart, even if there are substantial and compelling circumstances. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

We review denial of a downward dispositional departure for an abuse of discretion. *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). Reversal is rare because even when circumstances are present that favor departure, “departure is not mandatory.” *State v. Walker*, 913 N.W.2d 463, 468 (Minn. App. 2018). We will affirm a presumptive sentence if the record shows that “the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013).

The record shows that the district court evaluated the mixed evidence before it. During the sentencing hearing, the court acknowledged that Mrozek had begun treatment and expressed remorse for his actions, which are favorable factors. But it observed that Mrozek’s remorse was slow in coming and largely attributable to the later offense of causing his friend’s death. The district court noted that the presentence-investigation report (PSI) contains substantial information that weighed against a finding of particular amenability to probation. In particular, the PSI expresses concern that Mrozek “has faced multiple probation violations for on-going chemical use, poor contact with probation, and obtaining new charges.” And the PSI states that Mrozek lacks sober support; he misused prescription drugs (provided by his mother) while in his current treatment program and lied about that usage; and treatment staff believe that Mrozek “is just going through the motions

of treatment and isn't invested." Based on these circumstances, the PSI opines that Mrozek is "a danger to the community" and recommends imprisonment. The district court elected to "follow th[at] recommendation" and imposed the presumptive sentence.

Mrozek argues that the district court abused its sentencing discretion by (1) misapplying the remorse factor, (2) excluding relevant evidence from the Stearns County sentencing, and (3) inappropriately deferring to the opinion of the probation agent who wrote the PSI. This argument is unavailing in all respects.

First, Mrozek suggests that the district court, having credited his expression of remorse, abused its discretion by apparently not weighing this factor in favor of departure. But Mrozek cites no authority requiring a district court to simply find a defendant remorseful or not, nor any that requires it to depart dispositionally if it finds a defendant remorseful. To the contrary, a district court must decide not only whether a defendant exhibits "genuine remorse" but also "how much weight to give to that remorse." *State v. Solberg*, 882 N.W.2d 618, 626 (Minn. 2016). The district court's nuanced evaluation of Mrozek's remorse addressed both requirements. Mrozek has not demonstrated any abuse of discretion in the determination that his lately realized remorse does not outweigh the numerous other factors disfavoring probation.

Second, the district court did not exclude relevant evidence from the Stearns County sentencing. It denied Mrozek's request for funds to obtain the sentencing transcript—a decision that, as discussed above, was well within its discretion. But it received and considered the dispositional memorandum, sentencing order, and departure report from that sentencing.

Third, Mrozek has not demonstrated any error in the district court's use of the PSI. He contends the PSI was inaccurate or misleading. But he acknowledges the accuracy of the relevant facts therein: he has violated probation numerous times before, he caused his friend's death while released on bail in this case, his family is unable to provide him sober support, and he took his mother's prescription medication and lied about it to treatment staff. And the district court's sentencing remarks reflect that it did not simply "defer[]" to the PSI's prison recommendation, as Mrozek contends, but appropriately considered the PSI as relevant but not determinative. *See State v. Park*, 305 N.W.2d 775, 776 (Minn. 1981) (explaining that PSI may inform but does not determine departure analysis).

In sum, the district court considered the evidence that Mrozek urged in favor of departure, including the Stearns County sentencing materials, and evidence disfavoring departure and acted within its discretion in imposing the presumptive sentence.

Affirmed.